

ESTTA Tracking number: **ESTTA490192**

Filing date: **08/21/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Barc, Inc.
Granted to Date of previous extension	08/22/2012
Address	6121 Avenida Cresta La Jolla, CA 92037 UNITED STATES
Attorney information	Kent M. Walker Lewis Kohn & Fitzwilliam LLP 10935 Vista Sorrento Parkway Suite 370 San Diego, CA 92130 UNITED STATES kwalker@lewiskohn.com, kmoyerhenry@lewiskohn.com

Applicant Information

Application No	85188708	Publication date	04/24/2012
Opposition Filing Date	08/21/2012	Opposition Period Ends	08/22/2012
Applicant	faceBARKK, LLC PO Box 43 Pound Ridge, NY 10576 UNITED STATES		

Goods/Services Affected by Opposition


Class 045. All goods and services in the class are opposed, namely: Providing a social networking website for entertainment purposes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85458416	Application Date	10/27/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BARC		

Design Mark	
Description of Mark	The mark consists of the letters b a r c in stylized lower case font and blue color wherein the letter b further includes a semi-circle extending from the top of the stem of the letter and around and down the left side and under the bottom of the letter.
Goods/Services	Class 042. First use: Providing downloadable software from a website, that enhances a user's experience while watching TV, browsing the Internet, accessing the same digital media including video streams, audio streams, or accessing the same wireless or wired network, by allowing such concurrent users of such digital media or networks to share information, links or communicate based on their concurrent digital access; providing on-line downloadable software, that allow website providers, TV and video content originators and video stream originators to facilitate the exchange of information, including ratings, reviews, links or other topics of interest between concurrent viewers and users of their digital media or content

Attachments	85458416#TMSN.jpeg (1 page)(bytes) Notice of Opposition v2.pdf (4 pages)(132601 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kent M. Walker/
Name	Kent M. Walker
Date	08/21/2012

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **TRADEMARK TRIAL AND APPEAL BOARD**

3 In the matter of trademark application
4 Serial No. 85188708
5 Filed December 1, 2010
6 For the mark BARKK
7 Published in the *Official Gazette* on April 24, 2012.

8 BARC, INC.

9 Opposer,

10 vs.

11 faceBARKK, LLC

12 Applicant.

Opposition No.: _____

13 **NOTICE OF OPPOSITION**

14 BARC, INC.; incorporated in California; 6121 Avenida Cresta, La Jolla, California 92037.

15
16 The above-identified opposer believes that it will be damaged by registration of the mark
17 shown in the above-identified application, and hereby opposes the same.

18
19 1. Applicant FACEBARKK, LLC filed to register the proposed mark BARKK, Serial
20 No. 85188708, in IC 45 for “providing a social networking website for entertainment purposes” on
21 December 1, 2010, claiming a bona fide intent to use the mark in commerce, as is evidence by
22 publication of said mark in the Official Gazette in the April 24, 2012, issue (“Applicant’s Mark”).

23 2. On May 23, 2012, the Board granted Opposer’s timely filed request for an
24 extension of time until August 22, 2012, to file a Notice of Opposition to Applicant’s Mark.

25 3. Opposer’s use of Opposer’s Mark has been valid and continuous since at least
26 October of 2010 and has not been abandoned. Opposer’s mark is symbolic of extensive goodwill
27 and consumer recognition. As a result of the substantial amounts of time and effort in advertising
28

Notice of Opposition

1 and promotion, Opposer has developed an exceedingly valuable goodwill in respect to Opposer's
2 Mark.

3 4. Applicant's Mark and Opposer's Mark are similar in sound and meaning.

4 5. Applicant's services and Opposer's services are similar and related.

5 6. Applicant's services and Opposer's services are likely to be marketed and sold
6 together.

7 7. On information and belief, Opposer alleges that the services of Opposer and
8 Applicant are offered or to be offered in similar channels of commerce and offered to similar
9 customers.

10 8. Applicant's use of and application to register BARKK is without consent or
11 permission of Opposer.

12 9. Applicant's Mark and Opposer's Mark are likely to be confused.

13 10. On information and belief, Opposer's first use of Opposer's Mark precedes
14 Applicant's first use of Applicant's Mark in commerce.

15 11. Opposer is likely to be damaged by registration of Applicant's mark in that the
16 *prima facie* effect of registration of Applicant's Mark would tend to impair Opposer's right to use
17 the similar sounding wording contained in Applicant's Mark.

18 12. Opposer is likely to be damaged by registration of Applicant's Mark in that the
19 *prima facie* effect of registration of Applicant's Mark would tend to impair Opposer's right to
20 register Opposer's Mark with the U.S. Patent and Trademark Office.

21 13. For the foregoing reasons, the registration sought by Applicant is contrary to the
22 provisions of the Lanham Act, and Opposer would be damaged thereby.

23
24 WHEREFORE, Opposer BARC, INC. prays that the application for registration of the
25 mark BARKK, Serial No. 85188708, be refused and that this Opposition be sustained in favor of
26 Opposer.

27 The fee required by Sect. 2.6(a)(17) is enclosed herewith.

1 Opposer hereby appoints Kent M. Walker, member of the Bar of California, of Lewis
2 Kohn & Fitzwilliam LLP at 10935 Vista Sorrento Parkway, Suite 370, San Diego, CA 92130, to
3 act as attorney in the matter of the opposition identified above, to prosecute said opposition, to
4 transact all business in the Patent and Trademark Office, and in the United States courts
5 connected with this opposition, to sign its name to all papers which are hereinafter to be filed in
6 connection herewith, and to receive all communications relating to the same.

7 ///

8
9 DATED: August 21, 2012

10 Respectfully submitted

11 By: /KENT M. WALKER/
12 KENT M. WALKER
13 LEWIS KOHN & FITZWILLIAM LLP
14 Attorney for Opposer
15 Reg. No.: 38,649
16 10935 Vista Sorrento Pkwy., Ste. 370
17 San Diego, CA 92130
18 (858) 436-1330 (telephone)
19 (858) 436-1349 (facsimile)
20 kwalker@lewiskohn.com
21
22
23
24
25
26
27
28
29

1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that this Notice of Opposition to registration of the mark in Application
3 Serial No. 85188708 is being filed electronically, today, August 21, 2012, on the Electronic
4 System for Trademark Trials and Appeals for the United States Patent and Trademark Office.
5

6
7 /Kent M. Walker/
8 KENT M. WALKER
9

10 CERTIFICATE OF SERVICE

11 The undersigned certifies that a true and correct copy of the foregoing Notice of
12 Opposition was served on Applicant by mailing, postage prepaid, said copy on August 21, 2012,
13 via U.S. Mail, to the address of record listed for Application Serial No. 85188708.
14

15
16 faceBARKK, LLC
17 P.O. Box 43
18 Pound Ridge, NY 10576

19 /Kent M. Walker/
20 KENT M. WALKER
21
22
23
24
25
26
28
29